

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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CLERK'S OFFICE  
U.S. DISTRICT COURT  
SAN JUAN, P.R.

MICAELA GUALDARRAMA, et al.,  
Plaintiffs

v.

CIVIL 97-2481 (SEC) (JA)

MARIA RIVERA ORTIZ, et al.,  
Defendants

OPINION AND ORDER

On June 14, 2001, I denied defendant's "Motion for Protective Order for Deposition of Pedro Toledo" based on the court's rejection of defendant's qualified immunity defense. (Docket No. 100.) On August 7, 2001, defendants filed a "Motion for Reconsideration of Order Denying Protective Order and Supplement to the Motion for Summary Judgment Filed on March 27, 2001." (Docket No. 101.) The defendant's motion for reconsideration is denied, based again, on the court's rejection of defendant Toledo's qualified immunity defense.

BACKGROUND

Plaintiffs brought 42 U.S.C. § 1983 claims against Commonwealth of Puerto Rico Police Superintendent Pedro Toledo Dávila, police sergeant Walberto García, and police officers María Rivera Ortiz and Víctor Marrero. On August 9, 1999, plaintiffs sent defendant police Superintendent Pedro Toledo Dávila a "Notice of Deposition Duces Tecum" to be deposed on August 25, 1999. On August 17, 1999, defendant Pedro Toledo Dávila filed an "Urgent Motion for Protective Order to Quash Notice of Deposition." In his motion, defendant argued that his high rank and busy schedule should afford him protection from embarrassment, annoyance, oppression, or undue burden or expense in accordance to Federal Rule Civil Procedure 26(c). (Docket No. 27.) Defendant further claimed that plaintiffs had not conducted discovery, interrogatories or taken other

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3 depositions before seeking to depose him. The court granted defendant's motion but left  
4 open the possibility of reconsideration pending further discovery. (Docket No. 30.)

5 After more discovery had taken place, defendants Superintendent Pedro Toledo  
6 Dávila and sergeant Walberto García filed a motion for summary judgment on May 19,  
7 2000. (Docket No. 52.) I granted defendant's motion and explained that if plaintiffs could  
8 bring forth evidence, which would establish a causal link between defendant's alleged  
9 indifference and the alleged constitutional violations, defendants would be unable to attach  
10 qualified immunity as a defense. (Docket No. 78 at 16.) Plaintiffs, however, did not  
11 establish this link, based on their inability

12 to establish sufficient causation to determine that defendant  
13 Toledo's and García's conduct lead to these alleged violations  
14 or that such conduct lacked legal reasonableness. The plaintiffs  
15 have offered no admissible evidence, beyond their own  
16 conclusory allegations, to support their claims that these  
17 particular defendants acted deliberately, recklessly, or callously  
18 indifferent to plaintiffs' rights. Neither have the plaintiffs  
19 offered evidence that the defendants could have known or  
20 reasonably foreseen that police officers María Rivera Ortiz and  
21 Víctor Marrero Barrios would ever use excessive force, if indeed  
22 they did; that these officers should have been additionally and  
23 specially trained for this situation; or that their training as of  
24 that date was in fact deficient.

25 Docket No. 78, Opinion and Order at 21, ll. 11-21.

26 I granted summary judgment based on their failure to establish this causal link, not  
27 on qualified immunity grounds. On September 5, 2000, plaintiffs filed a "Motion to Alter  
28 or Amend Judgment," claiming that there were additional and relevant facts which plaintiffs  
had been unable to discover. Plaintiffs asked me to deny summary judgment and allow  
additional discovery. (Docket No. 82.) I granted the motion. On March 16, 2001,  
plaintiffs sent Mr. Toledo a Notice of Deposition "Duces Tecum" and set it for April 6,  
2001. On March 27, 2001, defendants filed a "Motion Requesting Protective Order for  
Pedro Toledo" (Docket No. 90) and a "Motion for Summary Judgment and Memorandum

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3 of Law in Support Thereof.” (Docket No. 91.) Plaintiffs filed a “Reply to Motion for  
4 Protective Order for Pedro Toledo” on April 4, 2001. (Docket No. 93.) On June 14, 2001,  
5 I denied defendant’s “Motion for Protective Order for Deposition of Pedro Toledo” based  
6 on the rejection of defendant’s qualified immunity defense. (Docket No. 100.) On August  
7 7, 2001, defendants filed a “Motion for Reconsideration of Order Denying Protective Order  
8 and Supplement to the Motion for Summary Judgment Filed on March 27, 2001.” That  
9 motion is the subject of this order.

#### 10 DISCUSSION

11 Defendant contends that I in part based my denial of the motion for protective order  
12 on an allegation not raised by plaintiffs in their initial complaint, the allegation being that  
13 Superintendent Toledo failed to adequately train officers to deal with highly stressful  
14 situations. Defendants argue that because plaintiffs did not raise the training issue in their  
15 complaint, they in turn did not address officer training in their motions for protective order  
16 or summary judgment. Defendants also state that plaintiffs have failed to produce evidence  
17 which would show that Puerto Rico police officers are inadequately trained, Mr. Toledo’s  
18 knowledge of this alleged deficiency, or that the officers were indifferent to plaintiff’s rights.  
19 (Docket No. 101.) Defendants also repeat their previous claims in their motion for  
20 summary judgment. I address those issues.

#### 21 1. PROTECTIVE ORDER

22 Defendant Pedro Toledo Dávila requests protection from deposition based on  
23 qualified immunity. Federal Rule of Civil Procedure 26(c), states that upon a proper  
24 motion, a court “may make any order which justice requires to protect a party or person  
25 from annoyance, embarrassment, oppression, or undue burden or expense[.]” The court  
26 previously used this same analysis to grant defendant’s initial motion to quash discovery  
27 when defendant held the post of Superintendent of Police. The court, however, did not  
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3 grant defendant's motion without condition. The court ruled that "[w]hile defendant is  
4 clearly not immune to deposition, the Court finds that plaintiffs should turn to other, less  
5 disruptive discovery tools at their disposal .... Once those options have been exhausted,  
6 we shall reconsider plaintiffs' request and order that Mr. Toledo appear for a deposition."  
7 (Docket No. 30 at 2, ¶ 1.) Since the time of that ruling, defendant no longer holds public  
8 office and the only discovery pending is Pedro Toledo Dávila's deposition and any  
9 documents he might have relating to the "invasions." Defendant's motion is reconsidered  
10 with these new circumstances in mind.

11 2. QUALIFIED IMMUNITY

12 The issue of officer training was one of other issues relied upon in the complaint and  
13 which fell under the more general supervisory responsibilities with which defendant is  
14 charged. (Docket No. 100, Order at 4-5.) I also relied on the issues of supervision,  
15 promulgation of orders, rules, policies, instruction and regulation in analyzing "deliberate  
16 indifference." Derogation of any of the aforementioned duties could presumably lead to  
17 incorrect actions by his officers. *Id.* at 5. Furthermore, plaintiffs have sufficiently raised  
18 the issue of officer training in their complaint. Plaintiffs claimed that the officers in charge  
19 (by definition including Superintendent of Police) "demonstrated deliberate indifference  
20 before the repeated civil rights violations occurring in their face." (Docket No. 1,  
21 Complaint at 2, ¶ 3.)

22 The first part of defendant's current motion is aimed at protecting Pedro Toledo  
23 from deposition based on qualified immunity. In *Harlow v. Fitzgerald*, 457 U.S. 800  
24 (1982), the Court explained that the threshold question needing resolution before  
25 discovery, was "whether that law was clearly established at the time an action occurred."  
26 *Id.* at 818. If plaintiffs could not satisfy this question, then the defendant public official  
27 is entitled to summary judgment. *Id.* The Supreme Court further explained that the  
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3 defendant could nevertheless sustain the defense of qualified immunity if he could “prove  
4 that he neither knew nor should have known of the relevant legal standard ... [b]ut again,  
5 the defense would turn primarily on objective factors.” Harlow v. Fitzgerald, 457 U.S. at  
6 819. I rely on my explanation of both the “clearly established” right, and “objective legal  
7 reasonableness” prongs from the order of June 14, 2001. See Docket No. 100 at 3-5. I  
8 concluded that section by saying that:

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10 Under such specific circumstances, former superintendent Toledo knew  
11 or should have known that his failure to assign properly trained police officers  
12 for the intervention *and to take other relevant appropriate and available measures,*  
13 *and thus his derogation of his official duties,* could foreseeably result in violations  
14 of the constitutional and civil rights of the housing project population.

15 Docket No. 100, Order at 5 (my emphasis).

16 Defendant's failure to assign properly trained officers is one in a series of possible  
17 derelictions of duties which fall under his supervisory responsibilities as police  
18 superintendent. These include his failure to ensure police supervisors are mindful of  
19 citizens' complaints, ensuring innocent residents were not accosted by his officers, and that  
20 “stop and frisk” were conducted free of excessive force.

21 The Supreme Court established that this “objective legal reasonableness” prong, if  
22 successfully argued by the defense, “should avoid excessive disruption of government and  
23 permit the resolution of many insubstantial claims on summary judgment.” Harlow v.  
24 Fitzgerald, 457 U.S. at 818. The Supreme Court does not suggest that this ruling should  
25 be read out of the context of the rules of discovery. Cf. Crawford-El v. Britton, 523 U.S.  
26 574, 593 n.14 (1998); Anderson v. Creighton, 483 U.S. 635, 646 n.6 (1987); Mitchell v.  
27 Forsyth, 472 U.S. 511, 526 (1985).

28 The Supreme Court has had the opportunity to refine their holding in Harlow to  
address the issue of discovery. More recent decisions regarding the issue of qualified  
immunity have relied on Crawford-El v. Britton. In Prisma Zona Exploratoria de Puerto

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3 Rico, Inc. v. Calderón, 154 F. Supp. 2d 245 (D.P.R. 2001), the court refused to grant a  
4 request for protective order to prevent the deposition of Puerto Rico Governor Sila M.  
5 Calderón.

6 In Crawford-El v. Britton, 523 U.S. 574, 593 n. 14, 118 S.Ct.  
7 1584, 140 L.Ed.2d 759 (1998), the Court stated that:

8 Discovery involving public officials is indeed one  
9 of the evils that Harlow aimed to address, but  
10 neither that opinion nor subsequent decisions  
11 create an immunity from all discovery. Harlow  
12 sought to protect officials from the costs of  
13 "broad-reaching" discovery, 457 U.S., at 818, 102  
14 S.Ct., at 2738, and we have since recognized that  
15 limited discovery may sometimes be necessary  
16 before the district court can resolve a motion for  
17 summary judgment based on qualified immunity.

18 Crawford-El v. Britton, 523 U.S. at 593 n. 14, 118 S.Ct. 1584  
19 citing Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97  
20 L.Ed.2d 523 (1987) and Mitchell v. Forsyth, 472 U.S. 511, 105  
21 S.Ct. 2806, 86 L.Ed.2d 411 (1985). In Anderson, 483 U.S.  
22 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987), the Court  
23 explained that:

24 ... discovery may be necessary before Anderson's  
25 motion for summary judgment on qualified  
26 immunity grounds can be resolved. Of course, any  
27 such discovery should be tailored specifically to  
28 the question of Anderson's qualified immunity.

29 Anderson, 483 U.S. 635 at n. 6, 107 S.Ct. 3034, 97 L.Ed.2d  
30 523 (1987).

31 Prisma Zona Exploratoria de Puerto Rico, Inc. v. Calderón, 154 F. Supp. 2d at 246.

32 Defendant's deposition could show the extent of his knowledge of civil rights  
33 violations by subordinate officers. Therefore, the deposition of defendant Pedro Toledo  
34 is relevant to establishing "objective legal reasonableness."

35 Plaintiff's request that defendant Pedro Toledo Dávila submit to deposition and to  
36 bring forth all documents pertaining to the government's policy of Police Public Housing  
37 Interventions or Invasions and Drug Intervention and/or Operatives since its inception in  
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3 1993 to this date. (Docket No. 90, Exhibit A.) This request is tailored enough to the  
4 unresolved factual disputes on record regarding causation and “objective legal  
5 reasonableness.”

6 Defendant’s knowledge of incidents of civil rights violations during previous drug  
7 interventions in housing projects or “invasions” is relevant to establish his legal  
8 reasonableness at the time of the alleged civil rights violations. Accordingly, plaintiffs are  
9 entitled to take Pedro Toledo Dávila’s deposition and the defense of qualified immunity  
10 is not now available to former Superintendent Pedro Toledo Dávila. The motion is denied  
11 and he is ordered to submit to deposition.

12 In San Juan, Puerto Rico this 22<sup>nd</sup> day of October, 2001.

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16 JUSTO ARENAS  
United States Magistrate Judge  
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